IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 1330 OF 2003

IN

SUIT NO. 391 OF 1996

Ashokkumar N. Agarwal .....**Plffs.**
vs.
Kuberchand N. Agarwal and ors. .....**Defnds.**

P.C. Kansara for the plffs.
R.K,. Desai for defendant no.1
H.P. Vyas i/b. S.P. Kanuga for defendant no.2.

CORAM: S.U. KAMDAR, J.

DATE : 30th September, 2005.

P.C. :.

1. The suit is for dissolution of the partnership firm and its account. Originally the motion was taken out for appointment of Receiver and injunction. In the said motion an order came to be passed by the learned single judge being order dated 4.4.97. In the said order the defendant no.1

who is running the business of hotel Ellora was directed to maintain account and furnish a copy thereof to the plaintiff. An appeal was preferred against the said order, being Appeal 908 of 1988. By consent of the parties the said appeal was disposed off by referring the disputes to the arbitration of the Justice S.C. Pratap (Retd). However the said arbitrator has found that the parties are not co-operating and therefore he has terminated the said reference and returned the papers and proceedings back to the parties by letter dated 9.8.2002. Earlier there are various notices given by the arbitrator. But however inspite of the same the defendants have not been co-operating in the said proceedings. In the aforesaid the present notice of motion is taken out.

2. I am of the opinion that there is a change of circumstances in the light of what has transpired pursuant to the reference made by the appeal court. In that view of the matter the matter is required to be looked into. The suit is inrespect of

dissolution of partnership and account. In that view of the matter as a matter of course the court Receiver is required to be appointed as Receiver. There is an admitted partnership in the present case and the same is at will. The plaintiffs as a partner has dissolved the said firm. Thus the proeprty as wwell as the busienss of the firm is required to be protected. The defendant no.1 cannot be allowed to run the business exclusively in exclusion of other partners of the firm. It is because he was permitted to carry on the business but he has not bothered to co-operate with the Arbitrator. There is a reply filed being affidavit in which the defence is raised is that there is an order operating of S.N. Variava, J. In my opinion the said order has become ineffective in the light of the order passed by the appeal court and subsequent events which have transpired as mentioned herein above. Inview thereof I appoint Court Receiver inrespect of the said Hotel Ellora and assets of the said business. The court Receiver not to dispossess any person found in occupation of the said assets and appoint the said

person as his agent without security but on the usual terms and conditions of royalty. Till the court Receiver takes possession there shall be injunction to operate. Motion disposed off accordingly.

3. Learned counsel for the defendants seeks stay of the order. Order is stayed for two weeks.

4. Court Receiver to act on authenticated copy.

sd/-

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